



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

EAG/NIS/MCM
F. #2019R00029

271 Cadman Plaza East
Brooklyn, New York 11201

September 21, 2021

By ECF

Honorable Ann M. Donnelly
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Robert Sylvester Kelly
Criminal Docket No. 19-286 (S-3) (AMD)

Dear Judge Donnelly:

The government respectfully submits this letter to correct its proposed supplemental amended jury instructions regarding Racketeering Act One and Racketeering Act Three. In its letter dated September 19, 2021, the government inadvertently cited the current version of Illinois Criminal Statute 720 § 5/5-2 in Exhibits A and C as opposed to the version of the statute that was in effect at the time of the charged offenses in Racketeering Acts One and Three. The government respectfully requests that the following statutory language be used for § 5/5-2:

Illinois Criminal Code Section 5/5-2 provides, in pertinent part, that:

A person is legally accountable for the conduct of another when:

- (b) The statute defining the offense makes him so accountable; or
- (c) Either before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense. However, a person is not so accountable, unless the statute defining the offense provides otherwise, if:
 - (1) He is a victim of the offense committed; or

- (2) The offense is so defined that his conduct was inevitably incident to its commission; or
- (3) Before the commission of the offense, he terminates his effort to promote or facilitate such commission, and does one of the following: wholly deprives his prior efforts of effectiveness in such commission, or gives timely warning to the proper law enforcement authorities, or otherwise makes proper effort to prevent the commission of the offense.

Outside of replacing the statutory text for § 5/5-2, the remainder of the government's proposed instructions related to Racketeering Acts One and Three in Exhibits A and C filed on September 19, 2021, should remain the same.

Respectfully submitted,

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cc: Clerk of Court (AMD) (by ECF)
All defense counsel of record (by ECF)